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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Coram :- Hon'ble Shri Vijay Kumar Shrivastava &
Hon'ble Shri Dhirendra Mishra, JJ.

Writ Petition No. 1958 of 2004

Petitioner : Dr. Pramod Kumar paharia, S/o Dr.K.N.Gupta, aged about 26 years, Occupation Student, R/o 489, New Mohan Nagar, Thathipur, Gwalior (MP).

Versus

Respondents :

1. State of Chhattisgarh, Through Secretary, Department of Health and Medical Education, Mantralaya, Shastri Chowk, Raipur (CG)
2. Pt.Jawaharlal Nehru Medical Colege, Raipur, through its Dean, Raipur (CG)
3. Shri Atin Kundu, Aged about 27 years, Student of First Year M.S. (Orthopedics), Pt Jawaharlal Nehru Medical College, Raipur (CG)

Present :- Shri P.Diwakar, Senior Advocate with Shri Adil Minhaz, counsel for the petitioner.

Shri Utkarsh Verma, Dy Government Advocate for the State/respondents No.1 and 2.

Shri V.G. Tamaskar, counsel for respondent No.3.

ORAL ORDER
(Dated 11th January, 2007)

The following order of the Court was delivered by **Vijay Kumar Shrivastava, J :**

In the year 2004 respondentNo.3 appeared in Pre PG Entrance Examination 2004 (All India) and got through it. He was allotted MS (Opthalmology) degree course. He took admission and prosecuted his studies in the subject for a couple of months. Later on, result of State Pre

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PG test 2004 was declared. Respondent No.3 passed that examination too. He resigned from his seat allotted to him on the basis of All India Pre PG Exam and took part in counseling conducted for allotment of seat as a result of Chhattisgarh Pre PG Test. Respondent No.3 was allotted PG (Orthopedics) degree course. Thereafter he took admission and prosecuted his studies and by now he has completed his course.

2) Petitioner herein appeared in Pre PG Test 2004 and got through it, but on counseling, he was deprived from getting PG (Orthopedics) degree course, as the seat was occupied by respondent No.3, however, he was awarded PG (Orthopedics) diploma course. He took admission in that course and is continuing his studies.

3) Petitioner has challenged the admission of respondent No.3, *inter alia*, on the ground that respondent No.3 by playing fraud and in violation of Niyam 11.4.1 of the Chhattisgarh Medical Snatkottar Pravesh Pariksha Niyam, 2004 (henceforth "the Niyam, 2004") got admission in PG Degree Course. In oppugnation, respondents No.1 and 2 have pleaded that the admission of respondent No.3 is in accordance with the rules. Respondent No.3 contested the petition and also challenged the *locus standi* of petitioner as well as raise the question of non-joinder of parties.

4) Relying on Niyam 11.4.1 of the Niyam, 2004, petitioner's contention is that respondent No.3 was not eligible to change his subject; therefore, allotment of PG (Orthopedics) Degree Course to him was wrong and illegal. Petitioner's further contention is that in order to take part in counseling respondent No.3 tendered false affidavit, i.e. Annexure - R- 1/ 2, and on the strength of false affidavit he succeeded in counseling and allotment of seat of his choice. On the other hand, learned counsel for respondents No.1 and

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2 supported the legitimacy of admission of respondent No.3. Respondent No.3 not only claimed his admission as valid, also contended that petitioner has no *locus* to challenge his admission, even his petition suffers from the defect of non-joinder of parties.

5) During the course of arguments, despite our insistence petitioner failed to demonstrate any bar on subsequent admission of the candidate on the strength of clearance of State Pre PG Test, who resign his earlier seats which he procured on the basis of Pre PG Entrance Exam (All India), even from perusal of complete Niyam, 2004 , we could not find any such bar. So far an Niyam 11.4.1 of the Niyam, 2004 is concerned, it is reproduced below :

> "11.4.1 A candidate so admitted will not be entitled to seek a change of subject/course later on any ground. No request for change of subject shall be entertained. The candidate shall also give an undertaking that he/she shall not make any application, representation or petition for change of subject/course so allotted/assigned to him/her."

6) The aforesaid Niyam only creates a bar in change of subject and from bare reading, it is clear that if a candidate has obtained admission on the basis of State Pre PG in accordance with the Niyams, he is not entitled otherwise than in accordance with Niyam 11.4.2 to change his subject. Here the case is completely different. Respondent No.3 got admission on the basis of Pre PG Test (All India) and when he got through the State Pre PG Entrance Test, he resigned his seat which was accepted by the concerned authorities and thereafter when he was not admitted to any course, he appeared in State counseling and was allotted with the seat in Orthopedics PG Degree Course. Neither there is any bar in any Niyams nor his admission is in any way against any Niyams/Rules.

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7) So far as the affidavit i.e. Annexure - R-1 /2 is concerned, this affidavit has been sworn on 09.07.2004 and admittedly respondent No.3 resigned his seat on 08.07.2004. Undoubtedly, on 09.07.2004 respondent No.3 was not studying in any of the Medical Colleges. Affidavit was only taken so that a person, who is already studying in any course on the basis of Chhattisgarh Pre PG Test, may not play fraud and occupy another seat. The requirement of submission of affidavit was to supply the information to the Department that on the date of counseling, the candidate is not prosecuting his study in any of the Medical College, therefore, whatever has been reduced in the affidavit was aimed to provide the said information.

8) Annexure R- 1 /2, which is an affidavit sworn by respondent No.3, is reproduced as under :

"// शपथ पत्र //

मैं डॉ. Atin Kumar Kundu आत्मज/आत्मजा Nikhil Kumar Kundu आयु 27 निवासी MIG-185, Tatibandh, Raipur (C.G.) शपथपूर्वक घोषित करता/ करती हूं कि :-

1. यह कि मैं उपरोक्त नाम पते का निवासी हूं।
2. यह कि मैं देश एवं प्रदेश के किसी भी चिकित्सा महाविद्यालय/संस्थान में स्नातकोत्तर डिग्री अथवा डिप्लोमा में प्रवेश नहीं लिया/नहीं ली हूं।
3. यह कि मैं यह शपथ पत्र छत्तीसगढ प्रीपीजी 2004 के काउंसलिंग में भाग लेने हेतु प्रस्तुत कर रहा/रही हूं।

स्थान :-

दिनांक :-

हस्ताक्षर ——————
नाम Atin Kumar Kundu
दिनांक 9/7/04

// सत्यापन //

मैं डॉ Atin Kumar Kundu आत्मज/आत्मजा Nikhil Kumar Kundu आयु 27 निवासी MIG-185, Tatibandh, Raipur (C.G.) शपथपूर्वक घोषित करता/ करती हूं कि उपरोक्त कंडिका कमांक 1 से 3 तक में दिये गए तथ्य मेरी व्यक्तिगत जानकारी के अनुसार पूर्णतः सत्य है।

दिनांक :-

गवाह :-

1. हस्ताक्षर ——————
   नाम Vinod Kumar Singh
   पिता का नाम Mr. V.Singh
   पता Katni

हस्ताक्षर ——————
नाम Atin Kumar Kundu
पता 9/7/04

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2. हस्ताक्षर ——————————
नाम Dr. Beant Preet Kaur
पिता का नाम S.Singh
पता Juni Vihar, Bilaspur

Sd/- (illegible)
R.K.Jangdey
Notary, Advocate
Raipur (C.G.)
Dated 9 JUL 2004"

9) From bare reading of the affidavit, it is manifest that the affidavit has been sworn only to support that on 09.04.2004, respondent No.3 was not prosecuting his study in any P.G. (Degree or Diploma) course and was not studying in any medical College. Un-disputedly, on 09.07.2004, respondent No.3 was not admitted in any Medical College therefore, neither he sworn false affidavit nor he played fraud. State who is the authority to admit candidates for P.G. Course has very fairly in its return conceded that Affidavit is not required to be submitted by any provision of Niyam 2004.

10) Here it is not out of place to mention that if a candidate is allowed to appear in All India P.G. Entrance Exam and at the same session was permitted to appear in Chhattisgarh Pre P.G. Test, and his appearance in both the examination is legal, how can he be refused to enjoy its fruits, i.e. to select subject of his choice, in accordance with the rules.

11) Without exploring whether the petition suffers from non-joinder of parties or *locus standi* of the petitioner, we dismiss the petition as we are of the considered opinion that admission of respondent No.3 is neither illegal nor against any rules. No costs.

Sd//-
V.K.Shrivastava
Judge

Sd/-
Dhirendra Mishra
Judge

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